

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

**DAVID A. GALYEN,**

**Petitioner,**

**-vs-**

**Case No. 3-:06-CV-381**

**ERNIE MOORE, Warden,**

**District Judge Thomas M. Rose**

**Respondent.**

**Chief Magistrate Judge Michael R. Merz**

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**ENTRY AND ORDER OVERRULING DAVID A. GALYEN'S  
OBJECTIONS (Doc. #18) TO CHIEF MAGISTRATE JUDGE MICHAEL R.  
MERZ'S REPORT AND RECOMMENDATIONS (Doc. #17); ADOPTING  
CHIEF MAGISTRATE JUDGE MERZ'S REPORT AND  
RECOMMENDATIONS IN ITS ENTIRETY AND TERMINATING THIS  
CASE**

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This matter is before the Court pursuant to pro se Petitioner David A. Galyen's ("Galyen's") Objection (doc. #18) to the Report and Recommendations of Chief Magistrate Judge Michael R. Merz (doc. #17). The Report and Recommendations was filed on June 12, 2007, and Galyen's Objections thereto were filed on June 25, 2007.

The Report and Recommendations addresses Galyen's Notice of Appeal (doc. #14) and his Motion for Leave To Proceed on appeal *in forma pauperis* (doc. #15). Chief Magistrate Judge Merz determined that Galyen's Notice of Appeal shows that his appeal is not frivolous and recommends granting permission to appeal *in forma pauperis*. Chief Magistrate Merz also recommends that Galyen's request for a certificate of appealability on the issues of his Ohio right to appeal and on the constitutionality of his sentence be granted. Finally, Chief Magistrate

Merz recommends that Galyen be denied a certificate of appealability on the issue of equitable tolling.

Galyen objects to the Chief Magistrate Judge's recommendation that he be denied a certificate of appealability on the equitable tolling issue. It is Galyen's objection that is now before the Court. The Warden did not file objections to the Report and Recommendations and has not filed a response to Galyen's Objections.

As required by 28 U.S.C. §636(b) and Federal Rules of Civil Procedure Rule 72(b), the District Judge has made a de novo review of the record in this case. Upon said review, the Court finds that Galyen's objection to the Chief Magistrate Judge's Report and Recommendations is not well-taken, and it is hereby OVERRULED. The Chief Magistrate Judge's Report and Recommendations is adopted in its entirety.

Permission to appeal *in forma pauperis* is GRANTED. Further, Gaylen's request for a certificate of appealability on the issues of his Ohio right to appeal and the constitutionality of his sentence is GRANTED. Finally, Galyen's request for a certificate of appealability on the equitable tolling issue is OVERRULED.

The Clerk is hereby ordered to provide a copy of this order to Mr. Gaylen at his latest address of record. The captioned cause is hereby ordered terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.

**DONE** and **ORDERED** in Dayton, Ohio, this Ninth day of July, 2007.

**s/Thomas M. Rose**

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THOMAS M. ROSE  
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record

David A. Gaylen